

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
(EAST ST. LOUIS, ILLINOIS)**

EDMUND WOODBURY, individually and on behalf)
of all others similarly situated,)
)
 Plaintiff,)
)
)
vs.) No. 3:05-CV-00301-GPM
)
)
)
)
 Defendants.)

PLAINTIFF'S MOTION TO REMAND PURSUANT TO 28 U.S.C. § 1447(d)

1. Plaintiff filed this case in 2003.
2. Defendants removed the case once before, and this Court remanded it to state court in 2004.
3. Nothing has taken place in the litigation which makes it removable again now (nor do defendants contend otherwise). Rather, they contend that the decision in *Kircher v. Putnam Funds*, 403 F.3d 478 (7th Cir. 2005), is an “order” within the meaning of 28 U.S.C. § 1446(b) which made the case removable.
4. As discussed in greater detail in the memorandum accompanying this motion, the *Kircher* decision does not constitute the kind of “order” within the meaning of section 1446(b) which authorizes a second removal. *See Doe v. American Red Cross*, 14 F.3d 196 (3d Cir. 1993).
5. Accordingly, this removal is untimely.

WHEREFORE plaintiff requests that the Court enter an order remanding the case to state court pursuant 28 U.S.C. § 1447(d) for the reason that Defendants’ second attempted removal is procedurally defective.

SWEDLOW & KING LLC

By: s/Robert L. King

ROBERT L. KING
701 Market Street, Suite 350
St. Louis, Missouri 63101
Telephone: (314) 241-4844
Facsimile: (314) 241-3525
E-mail: king@swedlowking.com

KOREIN TILLERY LLC
STEPHEN M. TILLERY
EUGENE BARASH
10 Executive Woods Court
Swansea, Illinois 62226
Telephone: (618) 277-1180
Facsimile: (314) 241-3525

KOREIN TILLERY LLC
GEORGE A. ZELCS
Three First National Plaza
70 West Madison, Suite 660
Chicago, Illinois 60602
Telephone: (312) 641-9750
Facsimile: (312) 641-9751
E-mail: gzelcs@koreintillery.com

BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, P.C.
ANDREW S. FRIEDMAN
FRANCIS J. BALINT, JR.
2901 N. Central Avenue, Suite 1000
Phoenix, AZ 85012
Telephone: (602) 274-1100
Facsimile: (602) 274-1199

Attorneys for Plaintiffs and the Class

CERTIFICATE OF SERVICE

The undersigned certifies that service of the foregoing document was made by means of the Notice of Electronic Filing on May 23, 2005 to the following counsel of record:

Glenn E. Davis

Armstrong Teasdale
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, MO 63102-2740
gdavis@armstrongteasdale.com

Daniel A. Pollack

Pollack & Kaminsky
114 West 47th Street
Suite 1900
New York, NY 10036-8295
dapollack@pollacklawfirm.com

Raymond R. Fournie

Armstrong Teasdale
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, MO 63102-2740
rfournie@armstrongteasdale.com

Jacqueline P. Ulin

Armstrong Teasdale
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, MO 63102-2740
julin@armstrongteasdale.com

Frank N. Gundlach

Armstrong Teasdale
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, MO 63102-2740
fgundlach@armstrongteasdale.com

Lisa M. Wood

Armstrong Teasdale
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, MO 63102-2740
lwood@armstrongteasdale.com

Martin I. Kaminsky

Pollack & Kaminsky
114 West 47th Street
Suite 1900
New York, NY 10036-8295
mikaminsky@pollacklawfirm.com

Anthony Zaccaria

Pollack & Kaminsky
114 West 47th Street
Suite 1900
New York, NY 10036-8295
212-575-4700
azaccaria@pollacklawfirm.com

Edward T. McDermott

Pollack & Kaminsky
114 West 47th Street
Suite 1900
New York, NY 10036-8295
etmcdermott@pollacklawfirm.com

s/Robert L. King

ROBERT L. KING
701 Market Street, Suite 350
St. Louis, Missouri 63101
Telephone: (314) 241-4844
Facsimile: (314) 241-3525
E-mail: king@swedlowking.com